

Memorandum 95-7

Power of Attorney Law: Followup Legislation

The Commission's Power of Attorney Law was enacted in 1994 and became operative on January 1. See 1994 Cal Stat. ch. 307 (SB 1907). A final report on the bill, including a revised text and Comments was approved by the Commission last fall. In the process of preparing this publication, several technical errors came to light. In addition, two minor substantive issues have arisen. Accordingly, the staff has prepared technical cleanup legislation to remedy these problems and requests Commission approval of the attached bill draft.

The minor substantive issues concern the following:

Notary Authority (Gov't Code § 8205)

Representatives of the National Notary Association expressed the concern that the authority in the Power of Attorney Law to certify copies of powers of attorney (Section 4307) was not coordinated with the general provisions concerning notaries in the Government Code. (See letter from Charles N. Faerber, Exhibit p. 1.) The language in the bill draft has been agreed upon with Mr. Faerber and has been cleared with the Secretary of State's office.

Effect on Old Durable Powers of Attorney for Property (Prob. Code § 4054)

A question has been raised in the banking community about the effect on pre-existing powers of attorney for property of the new execution rules in Section 4121 requiring, among other things, that powers be notarized or witnessed. Section 4054 applies the new law to all powers of attorney within its scope, and the scope provision, Section 4050(a)(1), makes clear that the new law applies to durable powers of attorney. The execution requirements are not a problem for pre-existing durable powers of attorney for health, since they have always been required to be notarized or witnessed. But before January 1, durable powers of attorney for property were not required to be notarized or witnessed.

This problem should be remedied as soon as possible. Accordingly, the attached bill draft amends Section 4054 to make clear that the validity of pre-existing powers of attorney is not impaired and also provides urgency language

at the end of the bill. The Commission should be aware, however, that it may not be possible to make the bill an urgency measure if we find it necessary to use a committee omnibus bill as a vehicle.

Warning Statement in Printed Form of DPAHC (Prob. Code § 4703)

The California Medical Association is concerned about a surplus word (“and”) in the warning statement required to be included in printed forms of the durable power of attorney for health care. (See letter from Alice P. Mead, CMA Legal Counsel, Exhibit p. 2.) The intent of the law is clear — the Comment to Section 4703 states that “the statement in former Civil Code Section 2433(b) that the witnesses had to be personally known to the principal has been deleted, since it was not consistent with other substantive requirements.” There is no requirement that the principal know the witnesses, nor has there been in the past. The law requires (and formerly required) that either (1) the witnesses personally know the principal or (2) that the principal’s identity be proven by satisfactory evidence. The staff proposes to delete the word “and” as set out on pages 5-6 of the attached bill draft.

Technical Changes in Sections Not Sponsored by Commission

In the interest of providing a complete publication, the Commission’s recent 1995 *Comprehensive Power of Attorney Law* included two 1994 bills affecting the division encompassed by the Power of Attorney Law that were not sponsored by the Commission. (See Section 4753, enacted by 1994 Cal. Stat. ch. 966 (SB 1557); Sections 4800-4806, enacted by 1994 Cal. Stat. ch. 1280 (SB 1857).) The Commission is not “responsible” for the language of these provisions, but it is appropriate to consider fixing technical problems in them since we need to make some other corrections in a bill this session. Two technical changes of this type are included in the bill draft:

Request to forego resuscitative measures (Prob. Code § 4753). The California Medical Association has requested addition of a comma to clarify the meaning of the following phrase from Section 4753(b):

A “request to forego resuscitative measures” shall be a written document, signed by the individual, or a legally recognized surrogate health care decisionmaker[,] and a physician and surgeon, that directs a health care provider to forego resuscitative measures.

(See letter from Alice P. Mead, CMA Legal Counsel, Exhibit p. 3.) It is hard to make sense of this language without reading a comma in the place indicated by brackets, but CMA finds its absence troublesome. Ms. Mead writes that “the health care organizations that were involved in the drafting and shepherding of this legislation agree that a prehospital DNR form **in all cases** must be signed by a physician, whether the individual or instead a legally recognized surrogate health care decision-maker signs the form.” This is supported by the bill analysis prepared for the Assembly Judiciary Committee (July 6, 1994) and the Senate floor analysis (Aug. 16, 1994). Does the Commission wish to include this correction in its power of attorney followup bill?

Effect of DPAHC registration on health care provider (Prob. Code § 4806). The procedure for registration of durable powers of attorney for health care with the Secretary of State was placed within the health care power statutes in the new structure by SB 1857. The original bill created the registration procedure in one section in the Civil Code. When the multi-section version of the procedure was placed in the Probate Code, the drafters overlooked the need to change internal cross-references from “this section” to “this chapter.” This defect is corrected in the amendment to Section 4806 in the bill draft.

Respectfully submitted,

Stan Ulrich
Assistant Executive Secretary



Since 1957

NATIONAL NOTARY ASSOCIATION

8236 REMMET AVENUE, P.O. BOX 7184, CANOGA PARK, CALIFORNIA 91309-7184

TELEPHONE: 1-818-713-4000 • FAX: 1-818-713-0842

*Serving America's
Notaries With Pride
and Integrity*

December 7, 1994

Law Rev

DEC 07 1994

File. _____

Mr. Stan Ulrich
California Law Revision Commission
4000 Middlefield Rd., Ste. D-2
Palo Alto, CA 94303

Dear Mr. Ulrich:

Thank you for giving the National Notary Association the opportunity to suggest a remedy to the problem in Section 4307 of the newly amended Probate Code wherein Notaries are authorized to certify copies of powers of attorney.

As I pointed out in our recent telephone conversation, California law (Gov. Code Section 8205(b)) empowers Notaries to certify copies only of Notary journal entries and only then at the request of the Secretary of State. Indeed, the official *Notary Public Handbook* issued by the Secretary of State to all California Notaries reads: "California law does not authorize notaries public to certify copies of any documents other than the notary's own official records. Persons requesting certified copies of documents should be referred to the official who has custody of the original document or to where the document has been officially filed or recorded."

To remove this statutory inconsistency and prevent confusion among Notaries, we suggest the following amendment to Government Code Section 8205(b) — proposed changes are underlined (like this):

- (b) It shall further be the duty of a notary public, upon written request:
- (1) To furnish to the Secretary of State certified copies of the notary's journal.
 - (2) To respond within 30 days of receiving written requests sent by certified mail from the Secretary of State's office for information relating to official acts performed by the notary.
 - (3) To provide certified copies of powers of attorney in accordance with Section 4307 of the Probate Code.

It would also be helpful if the new Section 4307(b)(3) were more specific: "(3) A county recorder or other official of a state or of a political subdivision who is authorized to make certifications."

As I mentioned, most states give their Notaries broad power to certify copies of any document that is not a public record nor publicly recordable. We would be in favor of legislation giving California Notaries this same authority. Please let me know if you would like further information on how this might be done.

Sincerely,

Charles N. Faerber
Vice President, Legislation

CNF:ecs



California Medical Association

221 Main Street, P.O. Box 7690, San Francisco, CA 94120-7690 (415) 541-0900
Physicians dedicated to the health of Californians

Direct Line 415/882-5136

December 20, 1994

Law Revision Commission

DEC 21 1994

File: _____

Stan Ulrich, Esq.
CALIFORNIA LAW
REVISION COMMISSION
4000 Middlefield Road
Suite D-2
Palo Alto, California 94303-4739

Re: SB 1907

Dear Stan:

You have indicated that you are preparing clean-up urgency legislation in the wake of SB 1907. As we discussed, there are two statutory provisions that CMA strongly believes could greatly benefit from revision for the purpose of clarification. One of these is not directly affected by SB 1907, but it is located within the DPAHC laws.

First, Probate Code §4703(b) currently provides that a printed form (such as CMA's) must include the following notice:

This power of attorney will not be valid for making health care decisions unless it either (1) signed by two qualified adult witnesses **and** who are present when you sign or acknowledge your signature or (2) acknowledged before a notary public in California.

As we discussed, the apparently superfluous "and" may cause considerable confusion. Former Civil Code §2433(b) requires that the DPAHC be either (1) signed by two qualified adult witnesses **who are personally known to you and** who are present when you sign or acknowledge your signature or (2) acknowledged before a notary public in California. The dangling "and" in current Probate Code §4703(b) raises the question whether the additional language in former Civil Code §2433(b) was inadvertently omitted or whether the "and" was inadvertently retained. It is particularly confusing since the declaration of witnesses specified in Probate Code §4701(b) still requires the witness to attest that the principal is personally known to the witness or that the principal's identity has been proven by satisfactory evidence. At the very least, to address this potential source of confusion, we recommend that the superfluous "and"

Stan Ulrich, Esq.
December 20, 1994
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in Probate Code §4703(b) be deleted.¹

Second, as we also discussed, there is a "critical comma" missing in a particular provision of SB 1557, now codified at Probate Code §4753(b). That sub-division presently states:

A "request to forgo resuscitative measures" shall be a written document, signed by the individual, or a legally recognized surrogate health care decisionmaker and a physician and surgeon, that directs a health care provider to forgo resuscitative measures. For the purpose of this section, a "request to forgo resuscitative measures" shall include a prehospital "do not resuscitate" form as developed by the Emergency Medical Services Authority or other substantially similar form. A request to forgo resuscitative measures may also evidenced by a medallion engraved with the words "do not resuscitate" or the letters "DNR," a patient identification number, and a twenty-four hour toll-free telephone number, issued by a person pursuant to an agreement with the Emergency Medical Services Authority.

All of the health care organizations that were involved in the drafting and sheparding of this legislation agree that a prehospital DNR form **in all cases** must be signed by a physician, whether the individual or instead a legally recognized surrogate health care decision-maker signs the form. A comma should therefore appear after the word "decisionmaker" on the third line of sub-division (b). Without such a comma, the text suggests that a DNR request is valid if it either signed by 1) the individual, or 2) a surrogate decision-maker and a physician, which was not the intent of anyone involved in the legislation.

One strong argument always offered in support of the appropriateness of pre-hospital DNR requests is that the presence of a physician's signature in all cases provides strong assurance that an individual will not execute such a document where it is medically inappropriate for him or her to do so, e.g., where a patient is clinically depressed or has some other serious mental disorder or does not accurately understand his or her diagnosis or prognosis. By suggesting that such a document is valid without a physician's signature as long as it is signed by the individual seriously undermines one of the important protections currently provided by the EMSA/CMA guidelines and form. Therefore, I urge you to reinstate the comma as part of your urgency legislation so that the sub-division provides that a pre-hospital DNR request "shall be a written document, signed by the individual, or a legally recognized surrogate health care decisionmaker, and a physician and surgeon, that directs a health care provider to forgo resuscitative measures."

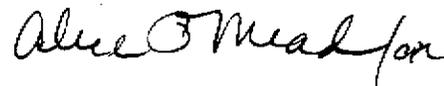
¹ You have indicated to me in our telephone conversation that you believe the "and" is of no legal significance, and we are not including that word in the notice portion of our DPAHC form.

Stan Ulrich, Esq.
December 20, 1994
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I am also enclosing a copy of proposed changes to the DPAHC laws proposed by CMA's Committee on Bioethical Issues, which has been adopted by the Board of Trustees, as well as an explanatory memo that is keyed to the recommendations and the current Probate Code sections that would be affected. I faxed these to you on December 1, but since my faxes have a mysterious way of becoming lost en route to their destination, I am enclosing a hard copy for your review. We would be very interested in hearing your comments on the proposed revisions, although I understand that you would not be speaking formally on behalf of the Law Revision Commission. Nevertheless, you have had considerable experience with the legislative process in general and the DPAHC laws in particular, and your views concerning the appropriateness and likely success of these revisions would be helpful.

I look forward to our ongoing conversations about California's DPAHC laws.

Sincerely,



Alice P. Mead
CMA Legal Counsel

APM/cdl

cc: Roger Purdy
Joan Hall

DALET\APM\SU121694.SB1

January 16, 1995

Power of Attorney Urgency Bill Draft

Staff Note. The staff does not propose to prepare Comments to sections that correct purely technical errors, such as the misdesignated chapter number.

An act to amend Section 8205 of the Government Code, and to amend Sections 4054, 4150, 4151, 4152, 4153, 4155, 4307, 4402, 4409, 4703, and 4806 of the Probate Code, relating to powers of attorney, and declaring the urgency thereof, to take effect immediately.

Gov't Code § 9205 (amended). Duties of notary public

SECTION 1. Section 8205 of the Government Code is amended to read:

8205. (a) It is the duty of a notary public, when requested:

(1) To demand acceptance and payment of foreign and inland bills of exchange, or promissory notes, to protest them for nonacceptance and nonpayment, and to exercise such other powers and duties as by the law of nations and according to commercial usages, or by the laws of any other state, government, or country, may be performed by notaries.

(2) To take the acknowledgment or proof of powers of attorney, mortgages, deeds, grants, transfers, and other instruments of writing executed by any person, and to give a certificate of such proof or acknowledgment, endorsed on or attached to the instrument. Such certificate shall be signed by the notary public in the notary public's own handwriting.

(3) To take depositions and affidavits, and administer oaths and affirmations, in all matters incident to the duties of the office, or to be used before any court, judge, officer, or board. Any deposition, affidavit, oath or affirmation shall be signed by the notary public in the notary public's own handwriting.

(4) To certify copies of powers of attorney under Section 4307 of the Probate Code. The certification shall be signed by the notary public in the notary public's own handwriting.

(b) It shall further be the duty of a notary public, upon written request:

(1) To furnish to the Secretary of State certified copies of the notary's journal.

(2) To respond within 30 days of receiving written requests sent by certified mail from the Secretary of State's office for information relating to official acts performed by the notary.

Comment. Paragraph (4) is added to subdivision (a) of Section 8205 to recognize the authority granted by Probate Code Section 4307 and to specify the manner of certification. The second sentence of paragraph (4) is included for consistency with paragraphs (2) and (3).

Prob. Code § 4054 (amended). Application to existing powers of attorney and pending proceedings

SEC. 2. Section 4054 of the Probate Code is amended to read:

4054. Except as otherwise provided by statute:

(a) On and after January 1, 1995, this division applies to all powers of attorney regardless of whether they were executed before, on, or after January 1, 1995.

(b) This division applies to all proceedings concerning powers of attorney commenced on or after January 1, 1995.

(c) This division applies to all proceedings concerning powers of attorney commenced before January 1, 1995, unless the court determines that application of a particular provision of this division would substantially interfere with the effective conduct of the proceedings or the rights of the parties and other interested persons, in which case the particular provision of this division does not apply and prior law applies.

(d) Nothing in this division affects the validity of a power of attorney executed before January 1, 1995, that was valid under prior law.

Comment. Subdivision (d) is added to Section 4054 to make clear that enactment of the Power of Attorney Law is not intended to affect the validity of a pre-existing power of attorney. See Section 4050 (types of powers governed by Power of Attorney Law). Thus, for example, a durable power of attorney for property matters executed before January 1, 1995, that is neither notarized nor witnessed is not made invalid by the new execution formalities provided by Section 4121. Subdivision (d) is declaratory of, and not a change in, the law.

Prob. Code § 4150 (technical amendment). Manner of modification of power of attorney

SEC. 3. Section 4150 of the Probate Code is amended to read:

4150. (a) A principal may modify a power of attorney as follows:

(1) In accordance with the terms of the power of attorney.

(2) By an instrument executed in the same manner as a power of attorney may be executed.

(b) An attorney-in-fact or third person who does not have notice of the modification is protected from liability as provided in Chapter ~~4~~ 5 (commencing with Section 4300).

Prob. Code § 4151 (technical amendment). Manner of revocation of power of attorney

SEC. 4. Section 4151 of the Probate Code is amended to read:

4151. (a) A principal may revoke a power of attorney as follows:

(1) In accordance with the terms of the power of attorney.

(2) By a writing. This paragraph is not subject to limitation in the power of attorney.

(b) An attorney-in-fact or third person who does not have notice of the revocation is protected from liability as provided in Chapter ~~4~~ 5 (commencing with Section 4300).

Prob. Code § 4152 (technical amendment). Termination of attorney-in-fact's authority

SEC. 5. Section 4152 of the Probate Code is amended to read:

4152. (a) Subject to subdivision (b), the authority of an attorney-in-fact under a power of attorney is terminated by any of the following events:

(1) In accordance with the terms of the power of attorney.

(2) Extinction of the subject or fulfillment of the purpose of the power of attorney.

(3) Revocation of the attorney-in-fact's authority, as provided in Section 4153.

(4) Death of the principal, except as to specific authority permitted by statute to be exercised after the principal's death.

(5) Removal of the attorney-in-fact.

(6) Resignation of the attorney-in-fact.

(7) Incapacity of the attorney-in-fact, except that a temporary incapacity suspends the attorney-in-fact's authority only during the period of the incapacity.

(8) Dissolution or annulment of the marriage of the attorney-in-fact and principal, as provided in Section 4154.

(9) Death of the attorney-in-fact.

(b) An attorney-in-fact or third person who does not have notice of an event that terminates the power of attorney or the authority of an attorney-in-fact is protected from liability as provided in Chapter ~~4~~ 5 (commencing with Section 4300).

Prob. Code § 4153 (technical amendment). Manner of revocation of attorney-in-fact's authority

SEC. 6. Section 4153 of the Probate Code is amended to read:

4153. (a) The authority of an attorney-in-fact under a power of attorney may be revoked as follows:

(1) In accordance with the terms of the power of attorney.

(2) Where the principal informs the attorney-in-fact orally or in writing that the attorney-in-fact's authority is revoked or when and under what circumstances it is revoked. This paragraph is not subject to limitation in the power of attorney.

(3) Where the principal's legal representative, with approval of the court as provided in Section 4206, informs the attorney-in-fact in writing that the attorney-in-fact's authority is revoked or when and under what circumstances it is revoked. This paragraph is not subject to limitation in the power of attorney.

(b) An attorney-in-fact or third person who does not have notice of the revocation is protected from liability as provided in Chapter ~~4~~ 5 (commencing with Section 4300).

Prob. Code § 4155 (technical amendment). Termination of authority under nondurable power of attorney on principal's incapacity

SEC. 7. Section 4155 of the Probate Code is amended to read:

4155. (a) Subject to subdivision (b), the authority of an attorney-in-fact under a nondurable power of attorney is terminated by the incapacity of the principal to contract.

(b) An attorney-in-fact or third person who does not have notice of the incapacity of the principal is protected from liability as provided in Chapter ~~4~~ 5 (commencing with Section 4300).

(c) This section is not subject to limitation in the power of attorney.

Prob. Code § 4307 (technical amendment). Certified copy of power of attorney

SEC. 8. Section 4307 of the Probate Code is amended to read:

4307. (a) A copy of a power of attorney certified under this section has the same force and effect as the original power of attorney.

(b) A copy of a power of attorney may be certified by any of the following:

(1) An attorney authorized to practice law in this state.

(2) A notary public in this state.

(3) An official of a state or of a political subdivision who is authorized to make certifications.

(c) The certification shall state that the certifying person has examined the original power of attorney and the copy and that the copy is a true and correct copy of the original power of attorney.

(d) Nothing in this section is intended to create an implication that a third person may be liable for acting on in good faith reliance on a copy of a power of attorney that has not been certified under this section.

Prob. Code § 4402 (technical amendment). Requirements for statutory form power of attorney

SEC. 9. Section 4402 of the Probate Code is amended to read:

4402. A statutory form power of attorney under this part is legally sufficient if all of the following requirements are satisfied:

(a) The wording of the form complies substantially with Section 4401. A form does not fail to comply substantially with Section 4401 merely because the form does not include the provisions of Section 4401 relating to designation of ~~co-agent~~ co-agents. A form does not fail to comply substantially with Section 4401 merely because the form uses the sentence "Revocation of the power of attorney is not effective as to a third party until the third party learns of the revocation" in place of the sentence "Revocation of the power of attorney is not effective as to a third party until the third party has actual knowledge of the revocation," in which case the form shall be interpreted as if it contained the sentence "Revocation of the power of attorney is not effective as to a third party until the third party has actual knowledge of the revocation."

(b) The form is properly completed.

(c) The signature of the principal is acknowledged.

Prob. Code § 4409 (technical amendment). Use of statutory form provided by repealed statutes

SEC. 10. Section 4409 of the Probate Code is amended to read:

4409. (a) A statutory short form power of attorney executed before, on, or after the repeal of Chapter 3 (commencing with Section 2450) of Title 9 of Part 4 of Division 3 of the Civil Code by Chapter 986 of the Statutes of 1990, using a form that complied with former Section 2450 of the Civil Code, as originally enacted by Chapter 602 of the Statutes of 1984, or as amended by Chapter 403 of the Statutes of 1985, is as valid as if Chapter 3 (commencing with Section 2450) of Title 9 of

Part 4 of Division 3 of the Civil Code had not been repealed by, and former Section 2511 of the Civil Code amended by, Chapter 986 of the Statutes of 1990.

(b) A statutory form power of attorney executed before, on, or after the repeal of Chapter 3.5 (commencing with Section 2475) of Title 9 of Part 4 of Division 3 of the Civil Code by the act that enacted this section, using a form that complied with the repealed chapter of the Civil Code is as valid as if that chapter had not been repealed.

Prob. Code § 4703 (technical amendment). Requirements for printed form of durable power of attorney for health care

SEC. 11. Section 4703 of the Probate Code is amended to read:

4703. (a) A printed form of a durable power of attorney for health care that is sold or otherwise distributed in this state for use by a person who does not have the advice of legal counsel shall provide no other authority than the authority to make health care decisions on behalf of the principal and shall contain, in not less than 10-point boldface type or a reasonable equivalent thereof, the following warning statement:

WARNING TO PERSON EXECUTING THIS DOCUMENT

This is an important legal document. Before executing this document, you should know these important facts:

This document gives the person you designate as your agent (the attorney-in-fact) the power to make health care decisions for you. Your agent must act consistently with your desires as stated in this document or otherwise made known.

Except as you otherwise specify in this document, this document gives your agent the power to consent to your doctor not giving treatment or stopping treatment necessary to keep you alive.

Notwithstanding this document, you have the right to make medical and other health care decisions for yourself so long as you can give informed consent with respect to the particular decision. In addition, no treatment may be given to you over your objection, and health care necessary to keep you alive may not be stopped or withheld if you object at the time.

This document gives your agent authority to consent, to refuse to consent, or to withdraw consent to any care, treatment, service, or procedure to maintain, diagnose, or treat a physical or mental condition. This power is subject to any statement of your desires and any limitations that you include in this document. You may state in this document any types of treatment that you do not desire. In addition, a court can take away the power of your agent to make health care decisions for you if your agent (1) authorizes anything that is illegal, (2) acts contrary to your known desires, or (3) where your desires are not known, does anything that is clearly contrary to your best interests.

This power will exist for an indefinite period of time unless you limit its duration in this document.

You have the right to revoke the authority of your agent by notifying your agent or your treating doctor, hospital, or other health care provider orally or in writing of the revocation.

Your agent has the right to examine your medical records and to consent to their disclosure unless you limit this right in this document.

Unless you otherwise specify in this document, this document gives your agent the power after you die to (1) authorize an autopsy, (2) donate your body or parts thereof for transplant or therapeutic or educational or scientific purposes, and (3) direct the disposition of your remains.

If there is anything in this document that you do not understand, you should ask a lawyer to explain it to you.

(b) The printed form described in subdivision (a) shall also include the following notice:

“This power of attorney will not be valid for making health care decisions unless it is either (1) signed by two qualified adult witnesses and who are present when you sign or acknowledge your signature or (2) acknowledged before a notary public in California.”

(c) This section does not apply to the statutory form provided by Section 4771.

Comment. Subdivision (b) of Section 4703 is amended to delete the surplus word “and.” This is a technical, nonsubstantive change.

Prob. Code § 4753 (technical amendment). Request to forego resuscitative measures

SEC. 12. Section 4753 of the Probate Code is amended to read:

4753. (a) A health care provider who honors a request to forego resuscitative measures, as defined in subdivision (b), shall not be subject to criminal prosecution, civil liability, discipline for unprofessional conduct, administrative sanction, or any other sanction, as a result of his or her reliance upon that request, if the health care provider: (1) believes in good faith that the action or decision is consistent with this section, and (2) has no knowledge that the action or decision would be inconsistent with a health care decision that the individual signing the request would have made on his or her own behalf under like circumstances.

(b) A “request to forego resuscitative measures” shall be a written document, signed by (1) the individual, or a legally recognized surrogate health care decisionmaker, and (2) a physician and surgeon, that directs a health care provider to forego resuscitative measures. For the purpose of this section, a “request to forego resuscitative measures” shall include a prehospital “do not resuscitate” form as developed by the Emergency Medical Services Authority or other substantially similar form. A request to forego resuscitative measures may also be evidenced by a medallion engraved with the words “do not resuscitate” or the letters “DNR”, a patient identification number, and a 24-hour toll-free telephone

number, issued by a person pursuant to an agreement with the Emergency Medical Services Authority.

(c) Request to forego resuscitative measures forms printed after January 1, 1995, shall contain the following:

“By signing this form, the surrogate acknowledges that this request to forego resuscitative measures is consistent with the known desires of, and with the best interest of, the individual who is the subject of the form.”

(d) A substantially similar printed form shall be valid and enforceable if all of the following conditions are met:

(1) It is signed by the individual, or the individual’s legally recognized surrogate health care decisionmaker, and a physician and surgeon.

(2) It directs health care providers to forego resuscitative measures.

(3) It contains all other information required by this section.

(e) In the absence of knowledge to the contrary, a health care provider may presume that a request to forego resuscitative measures is valid and unrevoked.

(f) This section shall apply whether the individual is within or outside a hospital or other health care facility.

(g) For purposes of this section “health care provider” shall include, but not be limited to, those persons described in Section 4615, and emergency response employees, including, but not limited to, firefighters, law enforcement officers, emergency medical technicians I and II, paramedics, or employees or volunteer members of legally organized and recognized volunteer organizations, who are trained in accordance with standards adopted as regulations by the Emergency Medical Services Authority pursuant to Sections 1797.170, 1797.171, 1797.172, 1797.182, and 1797.183 of the Health and Safety Code to respond to medical emergencies in the course of performing their volunteer or employee duties with the organization.

(h) This section does not repeal or narrow current laws relating to health care decisionmaking, including the provisions governing the use of the Durable Power of Attorney for Health Care contained in this chapter, and the provisions relating to the use of declarations concerning life sustaining treatments pursuant to the Natural Death Act (Chapter 3.9 (commencing with Section 7185) of Part 1 of Division 7 of the Health and Safety Code).

Comment. Subdivisions (b) and (d) of Section 4753 are amended to clarify the signing requirements for a request to forego resuscitative measures. These are technical, nonsubstantive changes.

Prob. Code § 4806 (technical amendment). Effect on health care provider

SEC. 13. Section 4806 of the Probate Code is amended to read:

4806. Nothing in this ~~section~~ chapter shall be construed to require a health care provider to request from the registry information about whether a patient has executed a durable power of attorney for health care. Nothing in this ~~section~~ chapter shall be construed to affect the duty of a health care provider to provide

information to a patient regarding advance health care directives pursuant to any provision of federal law.

Legislative Intent

SEC. 14. The amendment to Section 4054 of the Probate Code made by this act is declaratory of, and does not constitute a change in, existing law.

Urgency Measure

SEC. 15. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

The new Power of Attorney Law (Division 4.5 (commencing with Section 4000) of the Probate Code) enacted by Chapter 307 of the Statutes of 1994 is not intended to affect the validity of existing powers of attorney. This intent is not clear from the Power of Attorney Law as enacted and must be made clear immediately to avoid disruption of existing powers of attorney.